HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's Order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of the case

Criminal Misc Application No. 1053/2001

Bansi Dhar Tiwari

Versus

State and others

~~**A.F.R.(Approved for reporting)**~~

Not Approved for reporting

Date of Decision: 26.07.2005

Initial of Judge

Note: - Bench Reader will attach this at the top of the first page of the judgment when it is put before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No.1053/2001
(Old number 1442 of 1988)

Bansi Dhar Tiwari S/o Sri Krishna Nand Tewari r/o Saungaon (Mallital-Bhimital) P.O. Bhimital district Nainital. .....Applicant

Versus

1. State of Uttaranchal.
2. Girja Shanker Tewari S/o Chinakhan Line, Nainital
3. Ramesh Chandra Joshi S/o Heera Ballabh Joshi, r/o Staff House, no.4, Mallital, Nainital.... Respondents.

Dated: 26-7-2005

Hon'ble J.C.S. Rawat, J.

1. Heard Sri B.S. Adhikari learned counsel for the applicant, Sri Amit Bhatt, learned AGA for the State and Sri Chetan Joshi and Sri Deep Joshi learned counsel for respondents and perused the record.

2. This is an applicant under section 482 Cr.P.C. for quashing the orderdated 8.4.1986 passed in criminal case no. 168 of 1985 State Vs. Girj Shanker and another by the Munsif Magistrate, Nainital.

3. The brief facts relating to his case are that the chargesheet was submitted against the respondents no.2 and 3 namely Girja Shankar Tewari and Ramesh Chandra Joshi and charge were framed and the evidence was recorded. Statements of the accused u/s 313 Cr,. P.C. were also recorded. After hearing the parties the learned Magistrate summoned the applicant u/s 319 Cr. P.C. as an accused. The applicant preferred criminal revision no.133 of 1986 and the learned Session Judge dismissed the same. Feeling aggrieved

by the said orders the present application has been filed.

4. The learned counsel for the applicant has contended that the case related to collection of toll tax on the bridge situate at Chauffee district Nainital. The accused were entrusted the work of collecting the said money of toll tax and the said money was to be deposited in the Treasury according to rules. The accused persons did not deposit the said amount in the Treasury within the prescribed period. The Public Works Department transferred the accused-respondents and one another person directed to take over the charge from the accused person. They did not hand over the charge to the person who was deputed by the department. Thereafter it was revealed that there was embezzlement to the tune of Rs. 7359.50 It was further contended that the applicant reported the matter to the police who is a Junior Engineer and had supervising work over the staff and he was summoned only on the basis of circular letter issued by the department in which his supervisory jurisdiction over the collection and deposit has been laid down. It was further contended that the evidence adduced by the prosecution does not reveal that there was any entrustment of the said amount to the applicant. A perusal of the evidence recorded by the trial court does not reveal that there was an iota of evidence that the applicant collected the said amount. If the ingredients of entrustment are wanting the applicant cannot be said to have committed an offence u/s 409/466 IPC. The learned trial court erred in holding that the perusal of para no. 3 of the circular letter transpires that it was the duty of the applicant to supervise the collection of the toll and maintain the account. It was the duty of

toll money in the treasury. Since the toll money was not deposited in the Treasury, therefore, primarily the persons engaged alongwith the applicant were also liable to collect the money. The applicant has only supervisory jurisdiction and as such it cannot be said that he committed embezzlement as enumerated by the trial court.

5. In view of the above discussion I find that the impugned order is liable to be set aside. The application is allowed and the order dated 8.4.1986 passed by the Munsif Magistrate Nainital in criminal case no.168/1985 is quashed. Let the record of the court below be sent back immediately and the trial court will proceed with the case in accordance with law.

(J.C. S. Rawat, J.)

Daetd:-26.07.2005
MPS